

ORIGINAL

OPEN MEETING



MEMORANDUM

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DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

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JUN 24 2013

TO: THE COMMISSION

FROM: Utilities Division

DATE: June 24, 2013

DOCKETED BY

TJM

RE: IN THE MATTER OF THE APPLICATION OF INTELEPEER, INC. FOR AN ORDER AUTHORIZING THE ENCUMBRANCE OF ITS ASSETS.
(DOCKET NO. T-20695A-13-0141)

Introduction

On May 17, 2013, IntelPeer, Inc. ("IntelPeer" or "Company" or "Applicant") filed an application seeking expedited approval by the Arizona Corporation Commission ("Commission"), pursuant to A.R.S. § 40-285 and any other applicable statutes or rules, to encumber IntelPeer's Arizona assets, to enter into a term loan arrangement of up to \$20 million and to enter into a revolving credit facility of up to \$15 million.

The following background and transaction information was provided by the Applicants.

Background of Applicant

IntelPeer is organized under the laws of the State of Delaware and was formed on October 31, 2008, with principal offices located at 2855 Campus Drive, Suite 200, San Mateo, California, 94403. IntelPeer provides telecommunications services using fully managed, hosted, on-demand peering infrastructure to directly exchange voice traffic over Internet Protocol ("IP") or legacy Time Division Modulation ("TDM") networks between any application and any telephony device. In Arizona, IntelPeer is authorized to provide resold and facilities-based local exchange, resold and facilities-based long distance and switched access telecommunication services pursuant to authority granted by the Commission in Decision No. 73249 in Docket No. T-20695A-09-0387 on June 26, 2012.

Description of The Transactions

IntelPeer intends to enter into two financing arrangements:

- First, IntelPeer requests authority to enter into a term loan arrangement of up to \$20 million (the "Term Loan"). The Term Loan will be used to finance capital expenditures, refinance the Company's existing financing arrangements, and other permissible corporate purposes. The Term Loan is expected to have a maturity of

up to 36 months. The interest rate applicable to the Term Loan is expected to be established at closing based on market conditions, but may be up to 12%.

- Second, IntelPeer requests authority to enter into a revolving credit facility of up to \$15 million ("Revolver"). The Revolver is expected to have a maturity of 36 months, and have an interest rate equal to the 3-Month LIBOR plus 3.5%.

The financing arrangements discussed above are expected to be secured by liens on IntelPeer's assets. IntelPeer states that participation in the financing arrangements will not result in a change in IntelPeer's management or in its day-to-day operations. The financing arrangements will enable IntelPeer to bring services to new markets and allow more consumers to benefit from its competitive services.

Staff's Analysis

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. Staff concludes that a pledge of the Applicant's assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers.

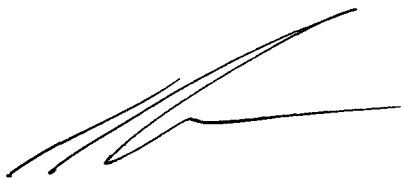
Staff does not believe the proposed transactions will negatively impact the operations of IntelPeer. The Applicant states that the transactions proposed in this Application should be seamless and transparent to customers. The proposed transactions will not result in a change to IntelPeer's tariffed rates or terms and conditions. Following these transactions, the same personnel who manage IntelPeer's services will continue their roles and there will be no change in the network assets used to provide IntelPeer's services. Additionally, it is important that customer deposits not be encumbered as part of the proposed transactions. In its June 17, 2013 amendment to Application, IntelPeer states that customer deposits will not be encumbered as part of the proposed transactions.

IntelPeer published a Legal Notice in the Arizona Republic newspaper on June 5, 2013. No Party has filed comments or sought intervention in this matter.

Staff's Recommendations

Staff recommends approval of the application with the following conditions:

- a. That within thirty (30) days following close of the proposed transaction, IntelPeer inform the Commission by filing an affidavit with Docket Control that transaction-related activities are completed.
- b. That all IntelPeer customer deposits and prepayments be excluded from the proposed transaction.



Steven M. Olea
Director
Utilities Division

SMO:LLM:sms\BES

ORIGINATOR: Lori Morrison

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **BOB STUMP**

Chairman

3 **GARY PIERCE**

Commissioner

4 **BRENDA BURNS**

Commissioner

5 **BOB BURNS**

Commissioner

6 **SUSAN BITTER SMITH**

Commissioner

7
8 IN THE MATTER OF THE APPLICATION)
9 OF INTELEPEER, INC. FOR AN ORDER)
10 AUTHORIZING THE ENCUMBRANCE OF)
11 ITS ASSETS.)
12
13

DOCKET NO. T-20695A-13-0141

DECISION NO. _____

ORDER

14 Open Meeting
15 July 17 and 18, 2013
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 **FINDINGS OF FACT**

19 1. On May 17, 2013, IntelPeer, Inc. ("IntelPeer" or "Company" or Applicant") filed an
20 application seeking expedited approval by the Arizona Corporation Commission ("Commission"),
21 pursuant to A.R.S. § 40-285 and any other applicable statutes or rules, to encumber IntelPeer's
22 Arizona assets, to enter into a term loan arrangement of up to \$20 million and to enter into a
revolving credit facility of up to \$15 million.

23 2. The following background and transaction information was provided by the
24 Applicants.

25 **Background of Applicant**

26 3. IntelPeer, Inc. is organized under the laws of the State of Delaware and was formed
27 on October 31, 2008, with principal offices located at 2855 Campus Drive, Suite 200, San Mateo,
28 CA, 94403. IntelPeer provides telecommunications services using fully managed, hosted, on-

1 demand peering infrastructure to directly exchange voice traffic over Internet Protocol ("IP") or
2 legacy Time Division Modulation ("TDM") networks between any application and any telephony
3 device. In Arizona, IntelPeer is authorized to provide resold and facilities-based local exchange,
4 resold and facilities-based long distance and switched access telecommunications services
5 pursuant to authority granted by the Commission in Decision No. 73249 in Docket No. T-20695A-
6 09-0387 on June 26, 2012.

7 **Description of the Transactions**

8 4. IntelPeer intends to enter into two financing arrangements:

- 9 • First, IntelPeer requests authority to enter into a term loan arrangement of up to
10 \$20 million (the "Term Loan"). The Term Loan will be used to finance capital
11 expenditures, refinance the Company's existing financing arrangements, and other
12 permissible corporate purposes. The Term Loan is expected to have a maturity of
13 up to 36 months. The interest rate applicable to the Term Loan is expected to be
14 established at closing based on market conditions, but may be up to 12%.
- 15 • Second, IntelPeer requests authority to enter into a revolving credit facility of up to
16 \$15 million ("Revolver"). The Revolver is expected to have a maturity of 36
17 months, and have an interest rate equal to the 3-Month LIBOR plus 3.5%.

18 5. The financing arrangements discussed above are expected to be secured by liens on
19 IntelPeer's assets. IntelPeer states that participation in the financing arrangements will not result
20 in a change in IntelPeer's management or in its day-to-day operations. The financing
21 arrangements will enable IntelPeer to bring services to new markets and allow more consumers to
22 benefit from its competitive services.

23 **Staff Analysis and Conclusions**

24 6. A.R.S. § 40-285 requires public service corporations to obtain Commission
25 authorization to encumber certain utility assets. The statute serves to protect captive customers
26 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
27 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
28 service. Staff concludes that a pledge of the Applicant's assets would not impair the availability of

1 service to customers since the Applicant provides competitive services that are available from
2 alternative service providers.

3 7. Staff does not believe the proposed transactions will negatively impact the operations
4 of IntelPeer. The Applicant states that the transactions proposed in this Application should be
5 seamless and transparent to customers. The proposed transactions will not result in a change to
6 IntelPeer's tariffed rates or terms and conditions. Following these transactions, the same
7 personnel who manage IntelPeer's services will continue their roles and there will be no change
8 in the network assets used to provide IntelPeer's services. Additionally, it is important that
9 customer deposits not be encumbered as part of the proposed transactions. In its June 17, 2013
10 amendment to Application, IntelPeer states that customer deposits will not be encumbered as part
11 of the proposed transactions.

12 8. IntelPeer published a Legal Notice in the Arizona Republic newspaper on June 5,
13 2013. No Party has filed comments or sought intervention in this matter.

14 **Staff Recommendations**

15 9. Staff recommends approval of the application with the following conditions:

- 16 a. That within thirty (30) days following close of the proposed transactions,
17 IntelPeer, Inc. inform the Commission by filing an affidavit with Docket
18 Control that transaction-related activities are completed.
- 19 b. That all IntelPeer customer deposits and prepayments be excluded from the
20 proposed transactions.

21 CONCLUSIONS OF LAW

22 1. IntelPeer, Inc. is a public service corporation within the meaning of Article XV of
23 the Arizona Constitution.

24 2. The Commission has jurisdiction over IntelPeer, Inc. and the subject matter in this
25 filing.

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1 3. The Commission, having reviewed the filing and Staff's Memorandum dated June
2 24, 2013, concludes that it is in the public interest to grant approval for the Applicant to encumber
3 assets as proposed and discussed herein.

4 ORDER

5 IT IS THEREFORE ORDERED that the application of IntelPeer, Inc. seeking approval to
6 encumber IntelPeer, Inc.'s assets, be and hereby is approved, as discussed herein.

7 IT IS FURTHER ORDERED that IntelPeer, Inc. is authorized to engage in any
8 transactions and to execute any documents necessary to effectuate the authorizations granted.

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1 IT IS FURTHER ORDERED that IntelPeer, Inc., within thirty (30) days following close
2 of the proposed transactions, will inform the Commission by filing an affidavit with Docket
3 Control that transaction-related activities are completed.

4 IT IS FURTHER ORDERED that the application of IntelPeer, Inc. is subject to the
5 condition that all customer deposits and prepayments be excluded from encumbrance and
6 equivalent amounts be retained by IntelPeer, Inc.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

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9 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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12 CHAIRMAN

COMMISSIONER

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14 COMMISSIONER

COMMISSIONER

COMMISSIONER

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16 IN WITNESS WHEREOF, I, JODI JERICH, Executive
17 Director of the Arizona Corporation Commission, have
18 hereunto, set my hand and caused the official seal of this
19 Commission to be affixed at the Capitol, in the City of
20 Phoenix, this _____ day of _____, 2013.

21 _____
22 JODI JERICH
EXECUTIVE DIRECTOR

23 DISSENT: _____

24
25 DISSENT: _____

26 SMO:LLM:sms\BES
27
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1 SERVICE LIST FOR:
2 DOCKET NO. T-20695A-13-0141

3 Mr. Michael T. Hallam
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7 Phoenix, Arizona 85004

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